

## § 2.718

## 10 CFR Ch. I (1–1–04 Edition)

the pending proceeding may be modified by the presiding officer as appropriate for the purpose of the proceeding.

[28 FR 10153, Sept. 17, 1963; 31 FR 12776, Sept. 30, 1966, as amended at 37 FR 28711, Dec. 29, 1972]

### § 2.718 Power of presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. He has all powers necessary to those ends, including the powers to:

- (a) Administer oaths and affirmations.
- (b) Issue subpoenas authorized by law.
- (c) Rule on offers of proof, and receive evidence.
- (d) Order depositions to be taken.
- (e) Regulate the course of the hearing and the conduct of the participants.
- (f) Dispose of procedural requests or similar matters.
- (g) Examine witnesses.
- (h) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose.
- (i) Certify questions to the Commission for its determination, either in his discretion or on direction of the Commission.
- (j) Reopen a proceeding for the reception of further evidence at any time prior to initial decision.
- (k) Appoint special assistants from the Atomic Safety and Licensing Board Panel pursuant to § 2.722;
- (l) Issue initial decisions; and
- (m) Take any other action consistent with the Act, this chapter, and sections 551–558 of title 5 of the United States Code.

[27 FR 377, Jan. 13, 1962, as amended at 45 FR 62028, Sept. 18, 1980]

### § 2.719 [Reserved]

### § 2.720 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he is not available, the Chairman of the Atomic Safety and Licensing Board Panel, the Chief Administrative Law Judge, or other designated officer will issue subpoenas requiring the attend-

ance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made, but he shall not attempt to determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it shall be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivery of a copy of the subpoena to the person named in it and tendering him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered, and the subpoena may be served by registered mail.

(d) Witnesses summoned by subpoena shall be paid, by the party at whose instance they appear, the fees and mileage paid to witnesses in the district courts of the United States.

(e) The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the officer before whom the witness is required to testify or produce evidence or with the Secretary. Failure to make proof of service shall not affect the validity of the service.

(f) On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavailable, the Commission may: (1) Quash or modify the subpoena if it is